IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 505 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BHIKHABHAI SHANKERBHAI PARMAR

Versus

STATE OF GUJARAT

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Appearance:

MR MH BAREJIA for Petitioner

Mr S P Dave, APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR BG JANI for Respondent No. 3, 4, 5

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CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 04/04/2001

ORAL JUDGEMENT

This is an application in Revision filed under Section 397 read with Section 401 and 482 of the Criminal

Procedure Code, 1973 (for short, 'the Code') for setting aside the order dated 24.11.2000 passed by the learned Addl.Sessions Judge, Mehsana, camping at Patan below application Exh.92 in Sessions Case no. 145/99 by which the learned trial Judge dismissed the said application of the prosecution under section 319 of the Code for joining parents and brother-in-law of the accused person as co-accused. It appears that during the course of trial, some witnesses have deposed that parents and the brother-in-law of the original accused were also involved in the said offence. Therefore, the aforesaid application was submitted at Exh.92 by the original complainant through the State for joining them as co-accused after the charge-sheet was filed. It was not the case of the prosecution that the aforesaid persons were also involved in the offence and they should also be made accused at the stage of the charge-sheet.

2. There the said application was dismissed by the learned Addl. Sessions Judge vide Judgment dated 24.11.2000. Hence this Revision Application has been filed. It has been mainly contended here that the trial court has not appreciated the evidence on record and has not applied his mind to the facts and circumstances of the case. That therefore, the order of the trial court is illegal and perverse and deserves to be set aside. It is therefore prayed that the present Revision Application be allowed and the order of the trial court be set aside and the aforesaid three persons be directed to be added as accused persons and directed to be tried along with the other accused persons in the said sessions case.

3. The petitioner's learned Advocate Mr Barejia, was not present when the matter was called out twice in the first session. He was again not present when the matter was called out in the second session. Therefore, I have heard the learned Addl. Public Prosecutor Mr S P Dave representing the State. I have also heard Mr B G Jani, learned Advocate appearing for respondents no.2,3 and 4, who are sought to be added as accused persons.

4. On going through the application and the order of the trial Judge, it is clear that till the charge-sheet was filed, it was never the case of the prosecution that the aforesaid three persons namely; respondents No.3 to 5 were involved in the said offence as accused persons. It may be that some witnesses may have developed a new story before the trial court that these three persons were involved in the said offence. Simply because some persons have been introduced at later stage and as there is no other reason or ground for joining them as accused,

it would never be prudent, legal, just or proper to add such persons as accused persons and it would not be legal and proper to try them along with other accused persons at the said trial

5. In the case of Michael Machado v. Central Bureau of Investigation, reported in AIR 2000 SC 1127 also it has been observed by the Supreme Court that invoking power at belated stage after cross-examination of 54 witnesses is not proper, particularly when it is at the cost of trial de novo.

6. It is required to be considered here that application Exh.92 was submitted by the original complainant in the middle of the trial. The said application was dismissed by the trial court and the State has not preferred Revision Application which shows that the State has not been dissatisfied by the order of the trial court. In the aforesaid view of the matter, the order impugned in this Revision Application does not appear to be illegal and perverse and, therefore, ita cannot be lightly set aside.

7. In the facts and circumstances of the case, there is no merit in the present Revision and it deserves to be dismissed. This Criminal Revision Application is accordingly dismissed. Notice discharged.

4.4.2001 [D P Buch, J.]
msp